

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

ROGER SCHWEIKERT,

Plaintiff,

v.

MARK R. HERRING, et al.,

Defendants.

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Civil Action No. 3:16-CV-00072

MOTION TO DISMISS

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Mark R. Herring, in his official capacity as the Attorney General of Virginia, James B. Alcorn, Clara Belle Wheeler, and Singleton B. McAllister, in their official capacities as Chairman, Vice-Chairman, and Secretary, respectively, of the State Board of Elections, and Edgardo Cortés, in his official capacity as the Commissioner of the Department of Elections, respectfully move to dismiss the Plaintiff's Verified Class Action Complaint for Emergency Injunctive and Declaratory Relief with Prejudice. Defendants so move on the grounds (1) that the Plaintiff lacks standing, such that the Court lacks subject matter jurisdiction, *see* Fed. R. Civ. P. 12(b)(1), and (2) that the Plaintiff's Complaint fails to state a claim upon which relief may be granted, *see* Fed. R. Civ. P. 12(b)(6).

The bases for this Motion and the grounds in support of the requested relief are detailed in the Defendant's Memorandum in Support of this motion, filed with this motion.

Respectfully submitted,

MARK R. HERRING
JAMES B. ALCORN
CLARA BELLE WHEELER
SINGLETON B. MCALLISTER

EDGARDO CORTÉS

By: /s/ Anna T. Birkenheier
Counsel

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Attorney General of Virginia

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***Roseboro* NOTICE**

PLAINTIFF Roger Schweikert, *PRO SE*, PLEASE TAKE NOTICE:

You are entitled to file a response to this motion, as well as a legal brief in opposition to the memorandum filed in support of this motion, but any such response must be filed within the Court's deadline for responses.

The Court could dismiss this action on the basis of this motion and its supporting memorandum if you do not file a response.

If there are any facts set forth in this motion and its supporting memorandum with which you disagree, your response must identify those facts and must set forth your version of the facts, supported by either affidavits (written statements signed before a notary public and under oath) or by filing sworn statements (bearing a certificate that it is signed under penalty of perjury), or both.

**FAILURE TO FILE A RESPONSE MAY RESULT IN THE COURT
DISMISSING YOUR COMPLAINT.**

/s/ Anna T. Birkenheier
Anna T. Birkenheier, Asst. Atty. Gen. (VSB No. 86035)
Counsel for Defendants

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that, on October 26, 2016, I am electronically filing the foregoing document with the Clerk of Court using the CM/ECF system and a copy of the foregoing document is being sent via overnight delivery to the following address:

Roger Schweikert
6209 Spring Hill Road
Ruckersville, Virginia 22968

_____/s/ Anna T. Birkenheier_____
Anna T. Birkenheier (VSB # 86035)
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